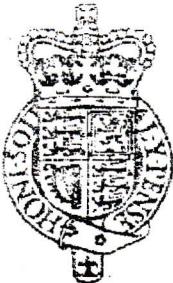


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Appeal Decision

Hearing held on 16 June 2004

Site visit made on 16 June 2004

by C J Anstey BA (Hons) DipTP DipLA MRPPI

an Inspector appointed by the First Secretary of State

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Date

06 JUL 2004

Appeal Ref: APP/L3815/A/03/1131656

Plot A1, Kirdford Quail Farm, Bridgefoot Meadows, Kirdford, Billingshurst, RH14 0LF.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr E Gentle against the decision of Chichester District Council.
- The application (Ref KD/03/02420/COU), dated 3 September 2003, was refused by notice dated 23 October 2003.
- The development is the change of use from quail farm to residential – stationing of one caravan for a gypsy family.

Summary of Decision: The appeal is dismissed.

Procedural Matters and Additional Information

1. The Council made it clear in its Hearing statement that it did not intend to pursue Refusal Reason No. 2, which related to flooding, as further research had found that the appeal site has not flooded in the past. In the light of this, and the fact that the Environment Agency does not wish to oppose the development on flood risk grounds, I have not dealt with flooding.
2. From the material submitted and the discussion at the Hearing it is apparent that the Council accept the gypsy status of the appellant, Mr E Gentle. On the basis of the information before me I have no reason to come to a different view.
3. During the Hearing various matters were clarified with regard to the occupation of the site and the appellant's intentions. Mr & Mrs Gentle and their eighteen year old son, Abraham, have lived on the appeal site since August 2003 and currently occupy the two touring caravans stationed on the land. Mr Gentle is nearly 60 years of age and wishes to have a settled base. However he still intends to travel to horse fairs. Both he and his wife have health problems. The site is owned by another son of the appellant, Ehanial, who bought the site in early 2003 but lives in Leatherhead. Last autumn the appellant's grandson, Michael (aged 8) also lived on the site and attended school at Wisborough Green between September and December 2003. At the end of last year Michael left the school and he now lives with his mother, Kathleen Casey, in the Warrington area. Mr and Mrs Gentle, and Abraham, are currently the only permanent residents on the site although they are visited by relatives who stay in one of the caravans. If the appeal were to be allowed Mr Gentle stated that he would wish his daughter Kathleen Casey, and her children Michael and Mariah (aged 4), to come and live with them on the site. This was not possible at present because of the lack of proper sanitation and mains electricity. Mr Gentle also indicated that he would like a mobile home on the site, and possibly stables. The appellant deals in, and breeds horses, which are kept elsewhere, whilst Abraham is involved in landscape contracting.

4. I have taken these items of information into account in my determination of the appeal which in my opinion involves the retention of two touring caravans for a gypsy family.

Main Issues

5. I consider that there are two main issues in this case. The first is the effect on the rural character and appearance of the local area. The second is whether the other material considerations are sufficient to outweigh any harm identified under the first issue.

Inspector's Reasons

Planning Policy

6. The development plan for the area comprises the *West Sussex Structure Plan 1993* and the *Chichester Local Plan – First Review* (1999). Of the development plan policies referred to me I consider the following to be relevant to the determination of this appeal.

7. *Policy G1* of the *West Sussex Structure Plan 1993* seeks to protect and improve the environment and avoid development that would cause visual damage. *Policies G3 and C1* of the *Structure Plan* make it clear that most forms of development will not be allowed outside the built-up areas of towns and villages and that the countryside will be protected for its own sake. *Policy H7* states that while permission may be granted for the establishment by gypsies themselves of caravan sites in suitable locations, further provision by the local authorities will be considered only in the light of local need.

8. The appeal site lies outside the built-up area of Kirdford village and in the countryside as defined in the *Chichester Local Plan – First Review*. *Policy RE1* of the *Local Plan* seeks to ensure that in the countryside development is restricted. *Policies RE2 and RE5* highlight the importance of protecting and enhancing the quality of the landscape. *Policy RE22* states that sites for gypsies will only be permitted in the rural area when it can be demonstrated that the number of families who reside in or resort to the District need the number of pitches in the location sought, and provided, amongst other things, they do not detract from the undeveloped and rural character and appearance of the countryside, particularly the Areas of Outstanding Natural Beauty.

Issue 1 - Character & Appearance

9. The appeal site lies in pleasant countryside to the south of the village of Kirdford, on the western side of Glasshouse Lane. It is located between a terrace of traditional cottages and a field used for growing trees and shrubs, where there are several poly-tunnels. To the rear of the site there are stables and poultry runs accessed via a track off Glasshouse Lane that also serves the appeal site and marks its northern boundary. To the north-west there are water meadows alongside the River Kird. The appeal site is about 0.1 ha in area, broadly rectangular in shape and is mainly grassed. The two touring caravans are located towards the centre of the site. At the rear of the larger caravan is a small canvas annexe where there is a chemical toilet and generator. The site is not provided with any mains services and therefore water has to be brought onto the site and waste disposed off-site.

10. *Policy RE22* of the *Chichester Local Plan – First Review* does not rule out the stationing of caravans for gypsies in the rural area of the District. However such development should not detract from the undeveloped and rural character and appearance of the countryside. Various other development plan policies recognise the importance of protecting the

countryside. I accept that the deciduous vegetation in the vicinity of the appeal site screens views of the two caravans from various perspectives. However the caravans are clearly visible through the gateway from Glasshouse Lane and from the public footpath that passes alongside the access track. Furthermore during those months when the surrounding hedges and trees are not in leaf I believe that the caravans would be more prominent. I acknowledge that additional planting of appropriate indigenous species would help to lessen the impact of the caravans, but this would take time to mature and would be unlikely to screen all views. I have taken account of the existing buildings and structures in the area and that the appeal site is not on elevated land. However this does not change my view as to the harmful visual impact of the caravans. I do not consider that the appeal site can be considered as an infill site as it does not lie within a substantially built-up frontage and there is only sporadic development in the area. Consequently it is my view that the two caravans on the appeal site appear incongruous and intrude into the attractive countryside to the south of Kirdford. Although the area is not subject to any special landscape designations the protection and enhancement of the countryside remains a fundamental objective of both local and national planning policy.

11. I am also concerned that if the appeal were to be allowed it would be unreasonable to prevent other changes on the appeal site, such as the introduction of a mobile home, small ancillary buildings and hard-surfacing. Such works would make the site appear much more developed than at present and even more at odds with the rural surroundings.
12. I conclude, therefore, on the first issue that the proposal harms the rural character and appearance of the local area. As such the proposed development is in conflict with the objectives of Policies G1, G3 and C1 of the *West Sussex Structure Plan 1993* and Policies RE1, RE2, RE5 and RE22 of the *Chichester Local Plan – First Review*.

Issue 2 - Other Material Considerations

13. I now turn to whether there are other material considerations that outweigh this conflict with development plan policy.
14. There is conflicting information as to the adequacy of gypsy site provision in the area. It is argued for the appellant that there is a considerable shortfall, whilst the Council believe that the turnover on authorised sites is sufficient to cater for demand. On the basis of the material before me, including the ODPM's bi-annual gypsy caravan count figures, the demand for vacancies on County Council sites and the nature of the existing private sites, I believe that there is a shortage of authorised gypsy sites in the Chichester area. Given this it is likely that in the event of having to leave the appeal site the appellant would be unable to find a pitch on an authorised site in the area.
15. *Circular 1/94*, however, indicates that gypsies themselves have an important role in gypsy site provision by providing their own private sites. Integral to this guidance is that in finding small private sites for settled occupation gypsies should endeavour to establish that they are acceptable in planning terms. There is little information before me to indicate that the appellant sought to do this before moving onto the site. In particular there was no prior discussion with the Council as to the likely acceptability of the appeal site as advocated in *Circular 1/94*. Such discussions would have revealed the Council's long-standing opposition to development on the appeal site, which included enforcement action in 1992 to secure the demolition of an unauthorised dwelling, and the surrounding area. In the absence of any information to indicate any sort of systematic search by the appellant I do not

consider that it is reasonable to conclude that there are no other small parcels of land in the Chichester area that would be acceptable in planning terms for use as a settled site. To assume such an embargo would clearly be in conflict with the aims of Circular 1/94.

16. Notwithstanding this it remains unclear to me why the appellant is seeking to settle in the Chichester area, other than the appeal site is pleasantly situated and owned by his son. At the Hearing it was indicated that the appellant had travelled around the area but no specific local connections were advanced. In fact I was told that prior to moving on to the site the appellant had spent two years in Warrington looking after his uncle. His daughter currently lives in Warrington. Before that the appellant had lived for many years on a site in Wandsworth. The appellant's son Ethania, the owner of the appeal site, lives in Leatherhead. The appellant's horses are kept at Leatherhead, Edenbridge and Warrington. Consequently on the basis of the available information I do not consider that the appellant has strong or established connections with the local area that necessarily requires settled residence. Given this the possibility of suitable sites being available for the appellant in those areas to which he has closer connections cannot be discounted.
17. At present there are no young children living on the site. In view of this there would be no disruption to the schooling of children if the appellant had to move from the site. I appreciate that the appellant's grandson, Michael, has lived on the site in the past and attended a local school. I am aware that in the event of the appeal being allowed Michael and his sister may live on the site in the future and be educated locally. I also accept that there may well be family benefits arising from bringing relatives to live on the site. However my consideration of personal circumstances must be based on who is currently on the site rather than what has happened in the past or what may happen in the future.
18. In this regard I accept that there are benefits for Mr & Mrs Gentle and Abraham in living on a small settled site. In particular they are able to offer each other mutual support and care and live as a small family group. Furthermore Mr Gentle has various health problems, including a bad back, high blood pressure and kidney problems, whilst Mrs Gentle suffers from chronic asthma. Living on a settled site would be likely to make it easier to access the necessary health care, including GP services. However in my opinion such benefits would be likely to accrue on any small settled site, not just the appeal site.
19. I consider that the general need for accommodation for gypsies in the area and the likelihood that the appellant would be unable to find a pitch on an authorised site in the area weigh in favour of the development. However it is clear from my reasoning that I believe that there may well be small sites, either in the area or further afield, that would meet the needs of the appellant without compromising environmental quality. The occupation of such a site would bestow the same family and health benefits as those enjoyed on the appeal site. In my judgement, therefore the other material considerations in this case do not override the clear conflict with development plan policy.
20. I conclude, therefore, on the second issue that the other material considerations are insufficient to outweigh the harm to the rural character and appearance of the local area. As such the retention of these two caravans is contrary to development plan policies designed to protect the countryside.

Overall Conclusions

21. I have concluded that the development harms the rural character and appearance of the local area and that the other material considerations are insufficient to outweigh this harm. This conclusion constitutes compelling grounds for dismissing the appeal. None of the other matters raised, including the appeal decision at West Ashling, outweigh the considerations that have led to my conclusions.

Human Rights

22. As regards to *Article 8* of the *European Convention on Human Rights*, I recognise that dismissal of the appeal would result in an interference with the appellant's home and private and family life. In reaching this view I am mindful that because of the injunction on the site it is likely that the appellant would have to vacate the site in the event of the dismissal of the appeal. However, that interference must be balanced against the public interest in pursuing the legitimate aims stated in *Article 8*, particularly the economic well-being of the country, which includes the preservation of the environment. The objections to the development which has taken place on this site are serious ones and can not be overcome by granting a temporary planning permission or one subject to other conditions. The public interest can only be safeguarded by the refusal of permission. In all the circumstances, I consider that the refusal of planning permission is necessary in a democratic society in furtherance of the legitimate aims stated. This does not place a disproportionate burden on the appellant given that I have found that there may well be small sites, either in the area or further afield, that would meet the needs of the appellant. I therefore consider that dismissal of the appeal would not result in a violation of his rights under *Article 8* of the *Convention*.

Formal Decision

23. For the reasons given above I dismiss the appeal.

Christopher Austin

INSPECTOR